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9 Attorneys for Plaintiff FINISAR CORPORATION

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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15 FINISAR CORPORATION, a Delaware
corporation,

16
17 Plaintiff,

18 v.

19 U.S. BANK TRUST NATIONAL
ASSOCIATION, a national banking
20 association, not in its individual capacity,
but solely in its capacity as Indenture
21 Trustee in behalf of all Holders of Finisar
Corporation's 5¼% Convertible
22 Subordinated Notes due 2008, 2½%
Convertible Senior Subordinated Notes due
23 2010, and 2½% Convertible Subordinated
Notes due 2010; and DOES 1 through 10,
24 inclusive,

25 Defendants.

26
27 **AND RELATED COUNTERCLAIMS.**
28

Case No. 5:07-CV-04052-JF (PVT)

**DECLARATION OF L. REX SEARS IN
SUPPORT OF PLAINTIFF FINISAR
CORPORATION'S MOTIONS TO
COMPEL AND FOR SANCTIONS**

Date: **Tuesday, June 17, 2008**
Time: **10:00 a.m.**
Courtroom: **5 (Magistrate Judge Trumbull)**

District Judge: Hon. Jeremy Fogel
Magistrate Judge: Hon. Patricia V. Trumbull

Complaint Filed: June 22, 2007
Trial Date Set: None Yet

1 I, L. Rex Sears, declare and state:

2 1. I am a shareholder of the law firm Workman Nydegger and one of the attorneys of
3 record representing plaintiff Finisar Corporation ("Finisar") in the above-captioned action (the
4 "Action"). I make this declaration based upon my own personal knowledge and records
5 maintained by Workman Nydegger, to which I have access in the course of fulfilling my duties
6 for Workman Nydegger and its clients (including Finisar), in the ordinary course of business.

7 2. Attached as Exhibit "A" hereto is a true and correct copy of "Plaintiff Finisar
8 Corporation's Notice of Taking Depositions of: (1) Defendant U.S. Bank Trust National
9 Association Pursuant to Rule 30(b)(6); (2) Diana Jacobs; and (3) Thomas Tabor; (4) Request to
10 Produce Documents at Rule 30(b)(6) Deposition," served by Finisar in the Action on February 5,
11 2008 (the "Notice").

12 3. Attached as Exhibit "B" hereto is a true and correct copy of excerpts from the
13 transcript of the March 26, 2008 deposition of Diana L. Jacobs, taken pursuant to the Notice.

14 4. Attached as Exhibit "C" hereto is a true and correct copy of a letter I sent to
15 counsel for Defendant U.S. Bank Trust National Association ("U.S. Bank") on April 25, 2008.

16 5. Attached as Exhibit "D" hereto is a true and correct copy of an email I sent to
17 counsel for U.S. Bank on April 30, 2008.

18 6. In addition to the efforts reflected in Exhibits B and C hereto, I have also engaged
19 in several telephonic conferences with counsel for U.S. Bank in order to try to resolve the issue
20 presented by "Plaintiff Finisar Corporation's Motion: (1) To Compel Production of Documents,
21 (2) To Compel Deposition Testimony, and (3) For Additional Time to Complete Deposition" (the
22 "Motion to Compel") without intervention by the Court; during which counsel for U.S. Bank has
23 confirmed that U.S. Bank will not reconsider its position.

24 7. I was awarded the Doctor of Law degree by The University of Chicago Law
25 School and admitted to the Utah State Bar in 1999, and I have been practicing law (primarily
26 complex commercial litigation) ever since. A more complete summary of my qualifications is
27 reproduced as Exhibit "E" hereto. My hourly billing rate for this matter is \$295 per hour, which I
28 understand to be well below the average for attorneys with comparable qualifications practicing

1 in and around San Jose, California. I spent ten hours preparing the Motion to Compel. I expect
2 to spend an additional five to ten hours reviewing and preparing a reply to any opposition filed by
3 U.S. Bank, and an additional five to ten hours preparing and presenting oral argument on the
4 Motion to Compel. The foregoing time summaries and estimates do not include time spent trying
5 to secure U.S. Bank's compliance without Court intervention or preparing the motion for
6 sanctions accompanying the Motion to Compel.

7 8. My partner, Sterling A. Brennan, was awarded the Juris Doctor degree by the J.
8 Reuben Clark Law School at Brigham Young University and admitted to the State Bar of
9 California in 1986, and he has been practicing law (primarily complex commercial litigation) ever
10 since, including time as an associate and partner of the law firm of Morrison & Foerster LLP,
11 which is headquartered in San Francisco, California. A more complete summary of Mr.
12 Brennan's qualifications is reproduced as Exhibit "F" hereto. Mr. Brennan's billing rate for this
13 matter is \$470 per hour, which I understand to be well below the average for attorneys with
14 comparable qualifications practicing in and around San Jose, California. Mr. Brennan spent two
15 hours preparing the Motion to Compel, and is expected to spend an additional one to three hours
16 preparing a reply to any opposition filed by U.S. Bank. The foregoing time summaries and
17 estimates do not include time spent trying to secure U.S. Bank's compliance without Court
18 intervention or preparing the motion for sanctions accompanying the Motion to Compel.

19 I declare under penalty of perjury under the laws of the United States and the State of
20 California that the foregoing is true and correct.

21 Executed this 13th day of May 2008, at Salt Lake City, Utah.

22 /s/ L. Rex Sears

23 L. Rex Sears
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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:
D. Anthony Rodriguez, drodriguez@mofo.com; Abby E. Wilkinson, awilkinson@faegre.com; Eva K. Schueller, eschueller@mofo.com; Michael B. Fisco, mfisco@faegre.com; Edward T. Wahl, ewahl@faegre.com and Paul T. Friedman, pfriedman@mofo.com.

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/s/ L. Rex Sears

L. REX SEARS

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